

## REQUEST FOR COUNCIL ACTION

MEETING

DATE: 31  
3/3/03

AGENDA SECTION: Consent Agenda	ORIGINATING DEPT: Civic Music	ITEM NO. D-10
ITEM DESCRIPTION: BMI License Agreement for Local Government Entities		PREPARED BY: Steven Schmidt

Title 17 U.S.C. 106(4) established property rights for musical works and grants creators and owners of copyrighted musical works the exclusive right to perform or authorize the performance of their works publicly. Under copyright law, public performance means more than concerts. The law also governs music played over public address systems and even CD players and radios in an office environment.

In the past, Civic Music has arranged for licenses for its performances on an event-by-event basis. Broadcast Music, Inc. (BMI) has recently developed a "blanket license" agreement for local governments, similar to the license Civic Music currently administers for the City with The American Society of Composers, Authors and Publishers (ASCAP).

Purchasing this license will shield the City from exposure to copyright infringement claims that could result from BMI-licensed music being played over the public address system at the Civic Center as its crews set-up for events, when Civic Music staff plays CDs of artists it is contemplating booking at a meeting, when a City Hall custodian listens to a radio while mopping floors, when the Choral Arts Ensemble gives a performance in the City Hall rotunda, when music is played during open skating at the Recreation Center, when a pep band plays music during a playoff game at the Curt Taylor Arena, when Council views a video tape at a public meeting with a musical score, etc. Failure to purchase such a license could result in damages from a minimum of \$750 for each work infringed plus attorney's fees and court costs.

For a community the size of Rochester the current annual cost of such a license is \$612/annum plus a percentage of gross revenues for events that generate more than \$25,000 in ticket sales or sponsorship dollars. Funds to pay the annual fee currently exist in the Civic Music budget.

The licensing agreement has been reviewed and approved as to content by the General Manager of Rochester Civic Music and as to form by the City Attorney. The agreement is the product of negotiation between the International Municipal Lawyers Association and BMI.

**Action Request: Resolution authorizing the Mayor to sign and the City Clerk to attest to a Local License Agreement for Local Government Agencies with Broadcast Music, Inc. (BMI).**

**COUNCIL ACTION:** Motion by: \_\_\_\_\_ Second by: \_\_\_\_\_ to: \_\_\_\_\_

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Spaeth, Terry

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From: Schmidt, Steve  
Sent: Wednesday, February 26, 2003 2:28 PM  
To: Neumann, Gary  
Cc: Kvenvold, Steve; Spaeth, Terry; Adkins, Terry  
Subject: RE: RCA - Bmi license agreement.

The percentage fee only applies once an event reaches gross revenues of \$25,000 and Civic Music only needs to report on events that exceed that amount. No RCM event has ever grossed \$25,000. (Our recent sell-out of Greg Brown grossed \$14,556)

Currently RCM reports on each and every event it programs and pays a percentage based on the capacity of the hall or a sliding flat fee based on attendance figures for free events. To illustrate, we pay .003% of gross ticket sales for a ticketed event in the Presentation Hall. (Our BMI fee for the Greg Brown event referenced above will be \$43.66.) On the other hand, we pay a flat BMI fee of \$67 for a *Down by the Riverside* event that attracts 3,000 and \$190 for a *Riverside* concert that that attracts 14,000. We paid BMI fees ranging from \$15-\$18/event for each concert held on the Peace Plaza last summer. The department paid a total of \$1,700.84 to Performing Rights Organizations (PROs) last Fiscal Year.

(It is my understanding that independent promoters are required to pay for their own licenses from PROs when renting space at the Civic Center, but I do not know if this policy extends to the rental of other City facilities. I would suggest that the City include a provision in all municipal lease agreements that requires lessees to obtain any and all PRO licenses that might be required for events held on City property.)

In my view, a blanket license is the most economical and most comprehensive method to use to avoid exposure to claims against the City. The financial risk of not having a blanket license is simply not worth the risk. PROs perform field audits all the time, i.e., they send staff people to facilities to monitor if any of the music to which the PROs own rights is performed by artists, broadcast over public address systems, or played in offices where more than one person can hear the music. (Many bars and restaurants no longer have juke boxes because they are required to purchase licenses from PROs; it is more cost-effective and less hassle for such establishments to use a music service, e.g., Muzak, to secure licenses from the PROs.)

Difficult to believe as it may seem, if a BMI representative was swimming laps at the Recreation Center and the lifeguard on duty was playing their personal copy of Billy Joel's "Greatest Hits Vol. 3" CD over the PA system, the City could conceivably get an invoice from BMI for \$750 for each of the 17 cuts on the disk (17 x \$750 = \$12,750!). Penalties and legal fees could amount to much more money.

A blanket license also requires less staff-time to administer because reporting is only required on events where gross revenues exceed \$25,000.

Please let me know if you require any additional input from me. I plan to attend Monday's Council meeting and will be available to answer questions that might arise.

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Steven J. Schmidt, General Manager  
Rochester Civic Music  
City Hall-Government Center